

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

(Hearing held October 30, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, May 29, 2002)

Case No. CBA-1174-C is a petition pursuant to Section 59-G-2.19 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a modification of a special exception for a private educational institution to make various improvements to the Holton-Arms School, located at 7303 River Road, Bethesda, Maryland.

Decision of the Board: Special exception modification **GRANTED**, subject to conditions enumerated below.

A public hearing was held on Tuesday, October 30, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Jody S. Kline, Esquire, and Harry W. Lerch, Esquire; Diana Beebe, Head of School; William Gridley, Architect; Alfred Blumberg, Land Planner; Brian Stephenson, Landscape Architect; and Lee Cunningham, Traffic Engineer.

Norman Knopf, Esquire, participated in the hearing representing the Bradley Boulevard Citizens Association and Complainants George Esenwein, Jane Kinzie, Richard Fong, Peter Masters, and Wendy Meer ("Complainants"); George Esenwein participated on behalf of the Complainants; George Springston participated on behalf of the Burning Tree Civic Association; and Linda Kauskay participated on behalf of the Bradley Boulevard Citizens Association. Bradley Boulevard Citizens Association, Burning Tree Civic Association, Complainants and Holton-Arms School are collectively referred to herein as "Parties."

William Chen, Esquire and Carol Lynn Green, Esquire, participated on behalf of Vivian Riefberg and John Ashford, adjoining property owners.

Martin Klauber, Esquire, the People's Counsel of Montgomery County, Maryland, participated in the proceedings neither in support of, nor in opposition to, the requested special exception.

Also participating in the proceedings were William Landfair and Seekey Cacciatore of the Technical Staff, Maryland-National Capital Park and Planning Commission (M-NCPPC), who testified neither in favor of, nor in opposition to, the proposed special exception.

The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

EVIDENCE PRESENTED TO THE BOARD:

1. The Holton-Arms School is a private preparatory day school for girls in grades 3 through 12. It is located on the north side of River Road (MD 190), east of the intersection with Burdette Road. The school has been at this location since 1963. The subject property, comprised of 58 acres, has approximately 770 feet of frontage with River Road and 110 feet of frontage with Burdette Road. The site also has frontage on the unimproved right-of-way for Burning Tree Road approximately 150 feet west of the intersection of Burning Tree and Beech Tree Roads. Bisecting the campus from north to south is Booze Creek, a tributary of the Cabin John Creek main stem. The existing school facilities located west of the creek include a library, a performing arts center, classroom buildings, a gymnasium/pool, tennis courts, two athletic fields, a former residence used as a child day care facility, and 307 striped parking spaces. Access to the school is provided by a signalized entrance at River Road opposite Royal Dominion Drive. Emergency access to the school was approved in 1987 from Burdette Road. The site contains approximately 21 acres of forest, most of which is located east of Booze Creek. The land area east of Booze Creek is undeveloped and includes some steep slopes, wetlands, and several identified sensitive plant colonies including "melic grass," "showy skullcap" and "shining bedstraw." The area east of Booze Creek contains a Washington Suburban Sanitary Commission easement for a buried sanitary sewer line.

2. The subject property is within the area of the 1990 Bethesda-Chevy Chase Master Plan ("Master Plan"). The Master Plan affirms the existing R-90 and R-200 zoning of the subject property, with R-90 zoning located east of Booze Creek and all the school land to the west of the creek zoned R-200 (Exhibit No. 12). Private educational institutions are allowed by special exception in the R-90 and R-200 Zones.

3. On February 14, 2000, Petitioner filed an application requesting a modification of its special exception to: (a) incorporate into the existing special exception additional land area donated to the Petitioner in 1998; (b) increase school enrollment limits to 665 students; (c) construct a new science wing; (d) expand its performing arts center, lower school facilities, and athletic facilities; and (e) add a second entrance to the campus (Exhibit Nos. 1 and 3).

4. On February 26, 2000, the Board of Appeals received a written complaint from various neighbors of the Petitioner regarding certain aspects of the operations of the school. On January 23, 2001, Petitioner amended the Statement of Operations submitted with its petition to address issues raised in the written complaint. While that

complaint was being reviewed and acted upon by the Board of Appeals, further processing of this Petition was deferred. The Board's Resolution to Modify and Reaffirm Special Exception (Exhibit No. 164), dated September 7, 2001, completed the review and action on the complaint.

5. In an effort to avoid further contested proceedings, the parties negotiated a Neighborhood Reconciliation Agreement ("Agreement") which was executed on October 17, 2001 (Exhibit No. 180). The Agreement resolved the parties' differences and concerns.

6. In accordance with the terms of the Agreement, the Petitioner amended its Special Exception Modification to restate certain original requests (described in paragraph 10 below), eliminate or modify other elements of the original petition (described in paragraph 11 below), and request approval of new features not included in the original petition (described in paragraph 12 below) (Exhibit No. 185).

7. The Petitioner's original requests, which were not modified by the Petitioner's amended proposal, include the following:

(a) incorporation into the existing special exception of approximately 3.6 acres of land donated to the school in 1998. This land area is bisected by Booze Creek and has frontage on the unimproved right-of-way for Burning Tree Road;

(b) construction of a new science wing containing approximately 16,720 square feet, which includes a three-story addition proposed for each side of an existing breezeway corridor that connects the main academic building with the existing Performing Arts Center ("PAC").

(c) expansion of the existing PAC to include (1) a small theater for presentations, rehearsals, and experimental productions; (2) a larger "Music Room" for both instruction and small group rehearsals/ presentations; and (3) an expanded "Orchestra Room" for teaching and presentation sessions for larger groups. The improvements will be located on the interior of a courtyard created by the PAC and the Gymnasium/Pool building and will not be visible from any adjoining properties; and

(d) construction of an approximately 6,056 square foot addition to the Lower School, which will include an "All Purpose Room" to provide space for gatherings, physical education, and lunches that is to be connected to the southern end of the existing Lower School building by a short passageway.

8. The Petitioner's amended proposal modified certain elements of the original special exception request as follows:

(a) deletion of the proposed "second entrance," a gated driveway that would have connected the main campus to the intersection of Burning Tree and Beech Tree Roads.

- (1) Petitioner advised the Board that it will record a covenant barring access to the school from Burning Tree and Beech Tree Roads under certain circumstances. (Exhibit F to Exhibit No. 180)

(b) relocation of the proposed athletic field and track approximately 120 feet further south than originally requested to reduce ground disturbance and tree loss. The re-siting would expand the separation between the athletic fields and colonies of sensitive plants, and the reorientation of the field and track would increase the distance from the critical root zones of trees located on the adjacent park property. The athletic facility will be connected to the main campus by a two-lane driveway traversing a bridge over Booze Creek, as originally proposed. The remaining improvements associated with the track/field have been reduced in scale. Seating for spectators has been reduced from 750 to 200. The covered press box has been replaced with a concrete "Scorers" pedestal, located at the top of the seating. Parking for vehicles and buses in the immediate vicinity of the athletic field has been reduced to four handicapped spaces and driveway parking for four buses, and all other parking for athletic events would be restricted to the school's main parking lot. Parking on neighborhood streets for athletic events and any activity related to the school will be prohibited. In lieu of two support buildings, the Petitioner now proposes a single structure containing bathrooms, a first aid/training room, coach's rooms, and storage areas (Exhibit No. 190(b) and Exhibits I(1) and I(2) to Exhibit No. 180).

(c) a request for a "Centennial Garden," located in front of the southern face of the campus's main building (Exhibit No. 196)

9. Petitioner's amended special exception modification request includes six new features:

(a) the widening and reconfiguration of the River Road entrance to improve the movement of cars entering and exiting the school. A fourth lane will be added, resulting in one inbound lane and three outbound lanes (Exhibit No. 192(b), Exhibit D to Exhibit No. 180). The redesign of the entrance will require the relocation of the Petitioner's existing sign, stone pillars, and entrance gate;

(b) the construction of a new interior circulation road running roughly parallel to River Road (Exhibit No. 192(b), Exhibit D to Exhibit No. 180) to provide a connection between the Lower School and the Upper School;

(c) the upgrading of an existing emergency driveway connecting the school to Burdette Road, for its entire length and extending to the Lower School parking lot. A gate will be installed to restrict access, except in emergency situations.

- (1) Petitioner has advised the Board that it will record a covenant limiting use of the access driveway to emergencies (Exhibit No. 177(I), Exhibits G and H to Exhibit No. 180).

- (2) These improvements, together with the proposed intra-campus roadway, will provide emergency access to the entire campus.

(d) the siting of the new science wing, referenced in No. 8 above, will bring the face of the buildings closer to the existing traffic circle at the school's main entrance. To maintain an adequately sized lawn in front of the science wing, the Petitioner will reconfigure the traffic circle to create more space and separation from the curb line to the face of the building. The redesign will result in less paved area and will permit construction of a ramp to provide improved handicapped access to the adjacent theater (Exhibit 195(b));

(e) the construction of a pathway at the northwest corner of the site to facilitate movement around the Library (Exhibit No. 177(l)); and

(f) the replacement of several outdated light poles around the campus with more efficient, better designed models.

10. Diana Beebe, Head of School, described the history of Holton-Arms and the state of existing facilities. Ms. Beebe testified about the proposed improvements, including the new science wing, Lower School All-Purpose Room, addition to the PAC, the new athletic facilities and the importance of those facilities to each of the programs that they will serve. Ms. Beebe also testified about the value of the Centennial Garden. Ms. Beebe described the importance of the revised access/circulation system, including the improved entrance to the school, the new intra-campus access road, and the enhanced Burdette Road emergency route. Finally, Ms. Beebe stated that the Petitioner's proposal would be in harmony with the surrounding neighborhood, that it would not be a nuisance, and that it would create no objectionable noise or activity.

11. William Gridley, testifying on behalf of the Petitioner as an expert in architecture, explained the architectural aspects of the proposal including the intended improvements to the science wing, PAC, and activities room (Exhibit Nos. 184 and 186). Mr. Gridley testified that construction of the associated facilities would be in substantial conformance with the plans submitted to the Board and referenced as SE-9, SE-10, and SE-11 (Exhibits 177(i), 177(j) and 177(k)); also Exhibit Nos. 187, 188 and 189). Mr. Gridley also stated that the proposed improvements would meet the general and specific conditions associated with special exceptions, including Section 59-G-1.2 and Section 59-G-2.19, and that the proposed uses would be compatible with the surrounding neighborhood. Mr. Gridley described the proposed single athletic field building, proposed by Petitioner, including motion-activated security lights under the canopy on the building and the low wattage, timed roadway lighting (Exhibit No. 177(k)). Finally, Mr. Gridley described the improvements to be made to the traffic circle as designated on Drawing SE-15 (Exhibit Nos. 195(a) and 195(b)).

12. Al Blumberg, testifying on behalf of the Petitioner as an expert in land use planning, described the features of the Petitioner's proposal and testified about the additional land area that would be added to the special exception (Exhibit No. 184). Mr. Blumberg stated that the proposal would comply with the general and specific standards

associated with the special exception, would conform to the Master Plan recommendations, and that the intended uses would be in harmony with the surrounding neighborhood.

13. Mr. Blumberg also testified about the proposed athletic field and track, as well as the related landscaping features, and described the current proposal for these facilities and the modifications to the original design (Exhibit Nos. 190(a) and 190(b)). Mr. Blumberg explained how the athletic field landscaping relates to the adjacent parkland, including the protection of critical root zones of trees within the park. Mr. Blumberg stated that the relocation of the athletic field and track would increase the separation from the sensitive plant colonies and described the protection and preservation efforts that will be undertaken by the Petitioner.

14. Mr. Blumberg described the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) (Exhibit No. 193) and the Conservation Easement that Petitioner will have recorded in the Montgomery County Land Records to protect environmental features and undeveloped portions of the subject property. Under the terms of the Conservation Easement Agreement, all wetlands on the Petitioner's property east of Booze Creek, including "Potential Wetlands" as that term is defined in the Conservation Easement Agreement, will be protected and left in an undisturbed state. The area covered by the Conservation Easement, including Wetlands and Potential Wetlands, is shown on the Conservation Easement Areas Plan (Exhibit No. 191, Exhibit J to Exhibit No. 180).

15. Mr. Blumberg further testified as to the details of the Burdette Road emergency driveway improvements (Exhibit G to Exhibit No. 180), and explained the details of the front entrance improvements (Exhibit Nos. 192(a) and 192(b)). Mr. Blumberg testified about the proposed improvements to the path around the Library (Exhibit No. 177(l) and Exhibit K to Exhibit No. 180) and represented that proposed landscaping for the path will be finalized in consultation with the adjoining property owners. Mr. Blumberg also testified that the Petitioner's proposed facilities would be served by adequate sewer and water service and that adequate stormwater management facilities were proposed to accommodate the new development. Finally, Mr. Blumberg described the design and functioning of the new traffic lanes and related transportation improvements at the River Road entrance including a bus stop and sidewalk installed by Montgomery County, Maryland.

16. Brian Stephenson, testifying on behalf of the Petitioner as an expert in landscape architecture, described the overall landscape and lighting aspects of the proposed special exception (Exhibit Nos. 190(a), 190(b) and 194). Mr. Stephenson testified about the landscaping and lighting details associated with the traffic circle (Exhibits Nos. 195(a) and 195(b)), the athletic field and track (Exhibit Nos. 190(a) and 190(b)), and the front entrance (Exhibit Nos. 192(a) and 192(b)). Mr. Stephenson also testified about how the hillside in front of Granger House, the residence of the Head of School, would be tiered and landscaped in order to complement the new intra-campus road running parallel to River Road (Exhibit Nos. 195(a) and 195(b)). Mr. Stephenson explained the lighting and landscaping details proposed for the Centennial Garden (Exhibit Nos. 96 and 196). Mr. Stephenson additionally testified that all the proposed

improvements would be in compliance with the general and specific standards for the special exception and, particularly, that the proposed landscaping and lighting would be compatible with the surrounding neighborhoods.

17. Lee Cunningham, testifying on behalf of the Petitioner as an expert in traffic engineering, described the effects that the proposed physical improvements to the Holton-Arms School campus would have on traffic, turning movements to/from the school, queuing on River Road, and traffic circulation. Mr. Cunningham testified that the intersection improvements at the school's entrance on River Road would ease the entering of cars onto the school and would improve the operating capacity of the intersection. He explained how the new interior roadway parallel to River Road would provide intra-campus relief in the event that an accident at the intersection of River Road/Holton entrance/Old Dominion Drive closed the School's entrance on River Road. Mr. Cunningham also explained the effects that the proposed Transportation Management Program ("TMP") (Exhibit E to Exhibit No. 180) would have on traffic volume and timing, as well as on traffic management. Mr. Cunningham testified that the critical intersections would work at acceptable levels of service and that the traffic from the school would not cause a nuisance or any objectionable conditions. Finally, Mr. Cunningham testified that both on-site and off-site traffic generated by the Petitioner's proposal would operate in a safe and efficient manner.

18. Mr. Kline stated that the Petitioner had amended this petition to be consistent with the provisions of the Neighborhood Reconciliation Agreement (Exhibit No. 180). He acknowledged Exhibit 181(a) (Memorandum relating to the Agreement) and Exhibit No. 181(b) (Statement relating to binding exhibits) on behalf of the Petitioner. Ms. Beebe stated that the Petitioner would implement and operate this special exception, as modified, in accordance with the exhibits of record and the testimony presented to the Board.

19. On behalf of the Bradley Boulevard Citizens Association, Linda Kauskay testified in unqualified support of the Petition of Holton-Arms School, as amended, provided that the revised proposal was constructed and operated in accordance with the terms and conditions of the Petitioner's submissions and the Agreement.

20. William Chen, Esquire described the concerns of Vivian Riefberg and John Ashford about Petitioner's proposed special exception, in particular, the proper identification and protection of wetlands on the Petitioner's property. Mr. Chen introduced the Stipulated Statement of Testimony of Joseph A. Berg, Ecologist and Senior Environmental Scientist (Exhibit No. 182), the wetlands expert of Ms. Riefberg and Mr. Ashford. Mr. Berg's Statement of Testimony based upon his inspection of Petitioner's property and his review of technical information, site plans, and maps in the files of the United States Army Corps of Engineers, the Maryland Department of the Environment, the Montgomery County Department of Permitting Services, and the M-NCPPC, found that there are five additional wetlands and Waters of the United States (called "potential wetlands") located on the Petitioner's property. Mr. Berg found that these potential wetlands had not been properly delineated or labeled as wetlands requiring protection. Mr. Chen explained that Ms. Riefberg and Mr. Ashford had reached an agreement with Petitioner to treat the potential wetlands that Mr. Berg

identified (Exhibit No. 182) in the same manner as the wetlands already delineated by the Corps of Engineers and to record a conservation easement (Exhibit J to Exhibit No. 180 and Exhibit No. 191) subjecting the potential wetlands to the same protections and same restrictions as other wetlands on the Holton-Arms property. Legal counsel for Petitioner acknowledged its agreement with Ms. Riefberg and Mr. Ashford.

21. George Springston testified that the Burning Tree Civic Association generally supported Holton's proposal with the exception of the athletic field and track. He stated that the Association would not address issues of inconsistency between the athletic improvements, the Master Plan and the Environmental Guidelines published by M-NCPPC.

22. George Esenwein, on behalf of the Complainants, testified that they were not opposed to the new athletic facilities and that they supported all of the other proposed modifications.

23. M-NCPPC Technical Staff reviewed the Petitioner's amended proposal, and recommended approval with conditions in a written report (Exhibit No. 173). At the hearing, William Landfair orally modified recommended condition number 3 to allow not more than 35 events per year, including track and field events, on the requested athletic field.

24. Mr. Blumberg testified that this requested special exception modification is subject to the Montgomery County Forest Conservation Law. Accordingly, a Natural Resources Inventory - Forest Stand Delineation plan (No. 4-99132) has been approved (Exhibit No. 193), showing that there are approximately 21 acres of high-quality, upland forest cover in the northeast portion of the property. The dominant tree species within that forest are tulip, maple, sycamore, beech, oak, and hickory. A Preliminary Forest Conservation Plan (Exhibit No. 177(u)) has also been approved for the project, detailing that approximately 7 acres of forest will be cleared to accommodate the athletic field and track. Technical Staff found that reforestation requirements for the site total 2.6 acres and can be met with a mixture of landscaping and on-site reforestation (Exhibit No. 173, page 6).

25. The Technical Staff reported that the Countywide Stream Protection Strategy assesses the Lower Booze Creek subwatershed as having poor stream conditions and fair to good habitat conditions, labeling it as a Watershed Restoration Area (Exhibit No. 173, page 6). Mr. Blumberg testified that the Petitioner proposes to provide water quality control via surface sand filters and water quantity control via an underground storage tank.

26. A stream restoration plan was submitted by the Petitioner to the M-NCPPC to mitigate the effects on Booze Creek of the athletic field and track, stream crossing and related construction.

27. Mr. Blumberg testified that the subject property contains wetlands as described in Exhibit No. 191. The site further contains a 100-year floodplain bisecting the property from north to south. In addition, five sensitive plant colonies have been

identified within the proposed forest retention areas and will not be disturbed (Exhibit No. 191). Seekey Cacciatore, of the M-NCPPC Technical Staff, testified that it would be better if the identified sensitive plant colonies were not fenced or otherwise identified after construction is completed to preserve their anonymity.

28. A preliminary subsurface exploration report was undertaken by the Petitioner to determine whether blasting would be required (Exhibit No. 62(b)). All blasting to be conducted by the Petitioner will be regulated by the State Fire Marshall's office. Based on Section 22-71 of the Fire Safety Code of Montgomery County Code and State blasting regulations, blasting will be limited to the hours of 7 a.m. to 7 p.m. weekdays and from 9 a.m. to 7 p.m. Saturdays.

29. The Staff found that the proposed improvements to the School's transportation network would manage the flow of traffic at the River Road entrance in a safe and efficient manner without impeding the flow of traffic on the State Highway. Staff also found the Petitioner's proposed TMP to be consistent with the contents of the previous TMP that Staff found to be acceptable (Exhibit No. 173, page 5).

30. Staff found that the proposed modification satisfies the general and specific requirements for the uses found in Sections 59-G-1.21, 59-G-2.19, and 59-G-2.13.1 of the Zoning Ordinance and recommended approval, subject to conditions (Exhibit Nos. 173 and 202).

FINDINGS OF THE BOARD:

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested modification to the special exception can be granted with the conditions set forth below.

Section 59-G-1.2.1 Standard for Evaluation

Section 59-G-1.2.1 sets forth the standard by which the Board must evaluate a special exception or its modification. That standard requires that a special exception be evaluated based on its inherent and non-inherent adverse effects at the particular location proposed, irrespective of adverse effects if elsewhere established in the zone (Zoning Text Amendment No. 99004, Opinion, page 4). Section 59-G-1.2.1 States:

A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals ... must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are

physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section to require the following analysis. The Board must:

(1) Make a determination as to the general neighborhood affected by the proposed use.

(2) Establish those inherent, generic physical and operational characteristics associated with a given use, in this case the modification of an existing private educational institution special exception, to create an evaluation standard. The evaluation standard does not include the physical size and scale of operations.

(3) Determine separately the physical and operational characteristics of the requested modification proposed by the Petitioner.

(4) Compare the generic physical and operational characteristics with the particular characteristics of the proposed modification. Inherent adverse effects are those characteristics of the modification that are consistent with the generic characteristics of the evaluation standard. Non-inherent adverse effects are those characteristics caused by the modification that are not found in the evaluation standard.

Applying the above analysis to this case, the Board finds as follows:

(1) The General Neighborhood

The Board finds that the surrounding neighborhood is predominantly residential in character. Adjoining the school to the north are single-family homes in the R-200 Zone. Adjoining the school to the east are single-family homes in the R-90 Zone and Burning Tree Local Park owned by the M-NCPPC. Located nearby to the southeast is Burning Tree Elementary School. Across River Road to the south are single-family homes in the R-200 Zone and the Primary Day School. Adjoining the campus to the west are single-family homes in the R-200 Zone and further to the west is Burning Tree Country Club. The interchange between River Road and the Capital Beltway (I-495) begins approximately 1,100 feet west of the school

(2) Evaluation Standard – Physical and Operational Characteristics

The Board recognizes that Planning Board staff has, in previous cases, offered seven criteria to be used to establish the physical and operational characteristics of a requested special exception use. These are: size, scale, scope, lighting, noise, traffic, and environment.

The Board finds that typical of a public or private elementary school in Montgomery County is a substantially sized building in terms of square footage. These buildings are generally one to two stories in height. Operationally, the Board finds that a private or public elementary school can be expected to have anywhere between 100 to 500 students. The Board finds that a certain degree of outdoor lighting for security purposes is inherent at such schools, that noise from outdoor recess or sports gatherings on outdoor fields is to be expected, and that special events such as Back-to-School nights or other post school hour activities will take place on occasion. The expected hours of operation would generally be between 8:00 A.M. and 3:00 P.M. Bus and automobile traffic are expected to be associated with a private or public elementary school. Finally, impacts on the environment, such as runoff from the school building and the parking facility, are to be expected.

(3) Proposed Modification: Physical and Operational Characteristics

The Petitioner has requested modifications to accommodate the needs of the academic, athletic, and extra-curricular activities. These improvements include the construction of a new science wing, expansion of the PAC, an addition to the Lower School Building, and a new athletic field and track. The Board finds that the new facilities will conform to the setbacks, design, and materials of the existing buildings and are located on the part of the campus which provides sufficient distance from adjoining properties to mitigate satisfactorily noise or possible adverse impacts. The Board finds with regard to the requested athletic field and track that the location, size, setbacks, scope of activities, forest conservation easements, and extensive new plantings will provide a satisfactory buffer for neighboring properties. The Board finds that the proposed TMP is designed to reduce traffic to and from the campus; and that the new facilities, as well as existing ones, will be served by an expanded and improved road system which will accommodate the traffic generated by the school without adverse impact on neighboring properties. The Board further finds the Petitioner's proposed lighting is more efficient than the existing lighting that it replaces and that the new lighting fixtures will reduce the potential impact on neighbors. The Board also finds that the proposed landscaping in the vicinity of the new entrance on River Road will mitigate the impact of the grading necessary to accommodate that road improvement.

(4) Comparison of Characteristics

After considering the generic characteristics of the use and comparing them with the physical and operational characteristics of the proposed modification, based on the Technical Staff analysis and recommendation, the Planning Board recommendation, the Petitioner's Transportation Management Plan, the evidence and testimony presented by the Petitioner and the other parties of record as set out above; and the amended modification, as described and set out above, the Board finds that all of the physical or operational characteristics associated with this requested modification will be inherent adverse effects.

Section 59-G-1.21 General Conditions.

The Board find that the petitioner has, by a preponderance of the evidence of record, established that the proposed modification meets the requirements in Section 59-G-1.21 as follows:

(1) *Is a permissible special exception in the zone.*

The Board finds that the modification of the Petitioner's special exception as proposed is permissible in the R-90 and R-200 zones.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As noted below, the Board finds that the proposed modification satisfies the standards and requirements for private educational institutions, in Section 59-G-1.21(a)(2) of the Zoning Ordinance.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board finds that the subject property is covered by the 1990 Bethesda-Chevy Chase Master Plan. The Plan affirms the existing R-90 and R-200 Zones for the property and recognizes that private school use may continue on the property.

(4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The Board finds that the proposed use will be in harmony with the general character of the neighborhood when considering population density, design, scale, and bulk of the proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The modification, because of the siting, design, landscaping, buffering and limitations on use, will be in harmony with the surrounding neighborhood. The Board further finds that there is adequate parking on site and the proposed transportation network changes will improve intersection operation, circulation and safety.

(5) *Will not be detrimental to the use, peaceful enjoyment, economic value or*

development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modification will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modification will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical. Restrictions on the times and frequency of use, public address system and permitted number of spectator seats, together with the increased setbacks and buffered areas, will result in no objectionable noise on nearby properties from the use of the athletic field and track. The anticipated noise from the athletic field and track will be within the standards imposed by the Montgomery County Noise Ordinance and should not have any effect on existing noise levels in the surrounding neighborhood. The track and field will not be lit. The Board finds that other lighting proposed will be limited and will not cause glare or other adverse impacts on the adjacent residential neighborhood; and that emphasis will be placed on shielding the source point of the lights to control their spread of light.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed use will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area. The existing special exception has operated for many years without causing such adverse effects and that the proposed road system modification will enhance traffic safety and emergency access for the school.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

The Board finds that the subject property will continue to be served by adequate public facilities.

(i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The Board finds that the modification will not require approval of a preliminary plan of subdivision.

(ii) *With regard to findings related to public roads, the Board ... must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board finds that the reconstructed River Road entrance, intra-campus road improvements and the Burdette Road emergency driveway will improve the Petitioner's transportation operations and facilities in a manner that is consistent with the goals of the School and its neighbors, and will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Section 59-G-2.19 Educational institutions, private.

(a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution upon a finding by the Board:*

(1) *That such use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element which is incompatible with the environment and character of the surrounding neighborhood; and"*

The Board finds that the proposed modification will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element. The school has been in operation at this location since 1963. The requested buildings, proposed athletic field and track, and other activity areas are well set back from adjoining uses, and the topography and forest buffer will provide additional buffering. The Board finds that the minimum setback for the field and track will be substantially greater than the minimum 100 feet recommended in the Montgomery County Recreational Facility guidelines referenced in the Staff Report (Exhibit No. 173). Bleacher seating for the track and field will be limited to 200. Use of the new field and track is limited to daylight hours and in the number, frequency and type of event that can occur.

(2) *That, except for buildings and additions thereto completed, or for which building permits have been obtained prior to the time of adoption of this section, such use will be housed in buildings architecturally compatible with other*

buildings in the surrounding neighborhood, and, in the event such building is to be located on a lot, tract or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, that the exterior architecture of such building will be of a residential home design, and at least comparable to existing residential homes, if any, in the immediate neighborhood; and

The proposed science wing, performing arts center expansion, and lower school building will be designed and constructed of materials that are similar to those of existing buildings and will be architecturally compatible with the surrounding neighborhood. The support building for the athletic field, while of institutional design, will be inset into the proposed grade to mitigate its impact and shielded by forest buffer from the view of neighboring residences. The Board finds that the proposed school buildings are architecturally compatible with the surrounding neighborhood.

- (2) *That such use will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

The proposed setbacks and buffering will be sufficient to prevent any adverse effect.

(4) *That such use can and will be developed in conformity with the following area, density, building coverage, frontage, setback, access and screening requirements, where specified:*

(a) *Area, Frontage and Setback: As shall be specified in a site plan of development approved by the Board; provided, that in no event shall such standards be less than the area regulations for the zone in which the private educational institution is proposed to be located; and*

(b) *Access Building Coverage and Screening: As shall be specified in a site plan of development approved by the Board; and*

(c) *Density: Such density, being the allowable number of pupils per acre permitted to occupy the premises at any one time as shall be specified by the Board upon consideration of the following factors:*

1. *Traffic patterns, including:*

- (a) *Impact of increased traffic on residential streets;*
- (b) *Existence of arterial highways; and*

2. *Noise or type of physical activity; and*

3. *Character, percentage and density of existing development and zoning within the community;*
4. *Topography of the land to be used for the special exception;*
5. *Provided that a density in excess of 87 pupils per acre may only be permitted upon a finding that:*
 - (a) *the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements,*
 - (b) *the additional density will not adversely affect adjacent properties,*
 - (c) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*
 - (d) *adequate provisions for drop-off and pick-up of students will be provided.*

The Board finds that the Petitioner has, by testimony, written statements, site plans, architectural drawings and other exhibits, demonstrated that the modification will conform to the development standards for the R-200 and R-90 Zones. The campus is comprised of 58.5 acres. The minimum lot sizes for the R-200 and R-90 Zones is 20,000 and 9,000 square feet respectively. The school buildings are set back well in excess of the required 40 foot minimum front yard, 15 foot side yard, and 30 foot rear yard setbacks. The location of the proposed athletic field exceeds the minimum setback of 100 feet recommended in the County Recreational Guidelines. Traffic patterns will not change. The enrollment of 645 full time students results in a ratio of students per acre well below the maximum allowed density of 87 students per acre.

(b) Site Plan

(1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans, and such other features necessary for the evaluation of the plan.

The Board finds that the applicant has submitted such a plan (Exhibit Nos. 177(l) and 184).

Therefore, based on the foregoing, the Board **GRANTS** the requested special exception modification, subject to the following conditions:

1. The Petitioner is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys to the extent that such evidence and representations are identified in this Opinion, including the following exhibits:

- a. Amended Statement of Operations (Exhibit 185)
- b. Special Exception Site Plan (Exhibit Nos. 177(l) and 184)
- c. Elevations (Exhibit Nos. 177(i) and 187, 177(j) and 188, and 177(k) and 189)
- d. Track and Field Plan (Exhibit Nos. 190(a) and 190(b))
- e. Conservation Easement Areas Plan (Exhibit No. 191)
- f. Front Entrance Improvements Plan (Exhibits Nos. 192(a) and 192(b))
- g. Lighting Plan (Exhibit No. 194)
- h. Front Circle Improvement Plans (Exhibits Nos. 195(a) and 195(b))
- i. Centennial Garden Plan (Exhibits Nos. 96 and 196)

2. Petitioner shall establish a neighborhood liaison committee for the purpose of facilitating communication between the school and its neighbors and to provide a mechanism to resolve potential disputes between the school and its neighbors. The People's Counsel of Montgomery County shall be an ex officio member of the committee. The committee shall meet at least quarterly.

3. The Petitioner shall implement the Transportation Management Plan (Exhibit E to Exhibit No. 180) to minimize and manage the vehicular traffic to and from its campus.

4. Holton-Arms shall not permit access to its campus from Burning Tree or Beech Tree Roads.

5. Access to Holton-Arms' campus from the improved Burdette Road emergency access shall be limited to emergency vehicles and/or emergency evacuation of the campus.

6. Petitioner's use of the new athletic field and track ("athletic improvements") shall be limited to (a) Holton-Arms' regular physical education classes; (b) school functions attended solely by Holton-Arms family (defined as students enrolled in

Holton-Arms during the academic year, their siblings and parents, Holton-Arms faculty and staff, and their children); (c) sports practices for Holton-Arms' teams; (d) solo track or sport practice by a member of the Holton-Arms family; (e) interscholastic athletic competitions (not to exceed a total of 35 per academic year, including track and field events) between Holton-Arms and other schools consisting of the Holton-Arms team and one opposing team from another school; provided, however, that track and field events may include up to four (4) opposing teams; and (f) interscholastic athletic conference championships in which Holton-Arms is a host school for conference elimination and/or championship events (regardless of whether Holton-Arms is a participant in the finals) for a conference or league in which Holton-Arms has participated that year; provided, however, that (i) any individual sport's conference elimination and/or championship events shall not be held on the athletic improvements more frequently than once every five (5) years and (ii) conference elimination and/or championship events shall not be held on the athletic improvements more frequently than once per year. During such championships, the number of events shall not exceed one match or game per weekday and two on weekend days. Except for such conference elimination and/or championship events, the total number of events held on the athletic improvements on weekend days shall not exceed five (5) per year. The proposed athletic improvements shall not be used during the time period June 15 through August 31, except for try-outs and sports practices for Holton-Arms teams or when one or both of the other fields are closed for periodic maintenance. Holton-Arms may request a change in the frequency of field use.

7. No non-portable public address system shall be installed in the vicinity of the new athletic field and track. Any portable public address system shall be used only by coaches or officials and only for track and field events.

8. Spectator seating for the proposed athletic field and track shall be limited to a maximum of 200 seats.

9. Parking on streets in the surrounding neighborhood is prohibited for athletic or other school related activities.

10. Petitioner must receive approval of a Final Forest Conservation Plan (which identifies wetlands on the Plan in a manner and with notations identical to Exhibit No. 191) from Maryland-National Capital Park and Planning Commission Technical Staff prior to release of sediment and erosion control or building permit, as appropriate. No grading, tree cutting, brush clearing or other work shall commence on that portion of the Petitioner's property which is the subject of the Conservation Easement (Exhibit 191 and Exhibit 180(j)) before the Conservation Easement is recorded in the land records of Montgomery County.

11. Petitioner must comply with the Montgomery County Department of Permitting Services requirements for stormwater management and sediment erosion control.

12. The Petitioner must comply with a stream restoration plan to be approved by the Montgomery County Department of Environmental Protection and the Maryland-National Capital Park and Planning Commission Technical Staff and with permits issued by the United States Army Corps of Engineers, Baltimore District, and/or the Maryland Department of the Environment, Wetlands and Waterways Program, that may be required by law, prior to implementation and prior to release of building permit or sediment and erosion control permit, as appropriate for any improvements on the east side of Booze Creek. Prior to release of building permit or sediment and erosion control permit for improvements on the east side of Booze Creek, the Environmental Planning Division of the Maryland-National Capital Park and Planning Commission shall verify that the Petitioner has received all necessary permits.

13. Any blasting shall be limited to 7 a.m. to 7 p.m. weekdays and 9 a.m. to 7 p.m. Saturdays, consistent with the requirements of the State Fire Marshall and the Montgomery County Fire Safety Code. The Petitioner shall provide notice 24 hours in advance to property owners located within 500 feet of the blasting site, and to the neighborhood liaison committee, of a blasting event.

14. All construction equipment and material must enter and exit the subject property via the River Road entrance.

15. No new building authorized by this modification shall be occupied, nor any new athletic facilities constructed, until completion of the roadway improvements set forth in Exhibit Nos. 192(a) and 192(b) and the completion of the emergency access improvement set forth in Exhibit Nos. 177(l) and Exhibit G to Exhibit 180.

16. Prior to commencement of construction, east of Booze Creek, Petitioner shall fence the identified sensitive plant colonies and protect them during the construction phase. Upon completion of construction and stabilization, the fencing shall be removed and the sensitive plant colonies shall not be otherwise identified to preserve their anonymity.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Donald H. Spence, Jr., Chairman, Louise L. Mayer, and Allison Ishihara Fultz in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of May, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

